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**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Written statement\*\* submitted by Human Rights Advocates, Inc. (HRA),  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2004]

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\*\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

### **The Death Row Phenomenon as a Violation of International Law**

1. Human Rights Advocates supports the ongoing work of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. In particular, we note the Rapporteur's deep concern regarding the lack of capacity in a number of retentionist countries to observe relevant safeguards and limitations when applying the death penalty.<sup>1</sup>
2. During 2002, at least 3,248 people were sentenced to death in 67 countries, and 1,526 people were executed in 31 countries. Four countries—the USA, Iran, Saudi Arabia and China—were responsible for 81% of these deaths. In the USA, 800 people have been executed since 1976, and over 3,700 men and women are currently on death row.<sup>2</sup>
3. The “death row phenomenon” is defined as a combination of circumstances to which a prisoner is exposed after being sentenced to death and placed on death row.<sup>3</sup> Death row—that part of a prison reserved for inmates awaiting execution—has been characterized as a living hell. Prisoners are generally confined to small cells for up to 23 hours a day and, as they are given few activities to fill that time, their mental and physical states deteriorate rapidly.<sup>4</sup>
4. In the Ukraine, a death row prisoner was confined for 24 hours a day, in a very restricted cell with no access to natural light. He was not allowed to receive parcels, or have any meaningful contact with the outside world for years.<sup>5</sup> In Uzbek death rows, prison conditions have been still worse: one court described cells so small that prisoners must either crouch or sit, inadequate sanitation, food shortages, and failure to provide basic medication.<sup>6</sup> In Jamaica, the conditions of detention for a death row inmate included confinement for 23 hours per day, no provision of a mattress or any bedding for a concrete bunk, inadequate ventilation and sanitation, total absence of natural lighting, lack of health care, and absence of any reeducation or work programs.<sup>7</sup>
5. The detrimental conditions on death row, however, are not restricted to the physical conditions of the prisoners' confinement. Courts worldwide have recognized the rapid and severe psychological deterioration that takes place in a prisoner who must wait years for his or her own execution; in fact, a US court stated that the process of carrying out a verdict of death

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<sup>1</sup> C.H.R. res. 2002/74, U.N. Doc. E/CN.4/2002/74 (2002) para. 124.

<sup>2</sup> Amnesty International Index: ACT 50/002/2003, April 11, [http://www.amnestyusa.org/abolish/reports/dp\\_worldwide.html](http://www.amnestyusa.org/abolish/reports/dp_worldwide.html).

<sup>3</sup> Soering v. United Kingdom, 161 Euro Ct. H.R. (Ser A) para. 81 (1989).

<sup>4</sup> Rahendra Prasad v. State of Uttar Pradesh, [1979] 3 S.C.R. 78, at 130 (Krishna Iyer); *see also* Amnesty International, *Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary*, (Amnesty International Report AMR 51/35/94).

<sup>5</sup> Dankevich v. Ukraine, Euro. Ct. H.R. at 29 (2003) (finding a breach of Article 3 of the European Convention on Human Rights).

<sup>6</sup> Mamtkulov and Abdurasulovic v. Turkey, Euro. Ct. H.R. at 18 (2003).

<sup>7</sup> Desmond Taylor v. Jamaica, Communication No. 705/1996, U.N. Doc. CCPR/C/62/D/705/1996 (4 June 1998).

is frequently so degrading to the human spirit as to constitute “psychological torture.”<sup>8</sup> After years on death row, a judge in India noted, “[the prisoner] must by now, be more a vegetable than a person and hanging a vegetable is not the death penalty.”<sup>9</sup>

6. Delays, which drastically exacerbate the detrimental effects upon prisoners, have come to dominate the tortuous experience of death row. In the United States, for example, the average length of time between sentencing and execution has increased from 51 months in 1977 to 133 months in 1997. Of the 85 prisoners executed in 2000 in the US, the average time spent on death row was 11 years and five months.<sup>10</sup> Delays in Jamaican courts have left prisoners on death row for more than 17 years; several times during this period, prisoners were brought to the chamber to await execution, only to be removed after a few hours.<sup>11</sup> In Japan, prisoners have spent over 30 years on death row, with no indication of when the execution might take place.

7. The European Court of Human Rights has found that the death row phenomenon violates Article 3 of the European Convention on Human Rights.<sup>12</sup> Factors considered when making this determination include the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.<sup>13</sup> Furthermore, the UN Judicial Privy Council has held that delay alone can be sufficient to warrant a finding of death row phenomenon in certain cases.<sup>14</sup> In fact, the Privy Council found that as little as four years and ten months constituted the death row phenomenon.<sup>15</sup>

8. Prisoners on death row will almost inevitably take advantage of any available means to delay their own execution.<sup>16</sup> As several courts have pointed out, prolonged delays on death row are the result of failures of the judicial system, not that of the prisoners.<sup>17</sup> Despite the recognition of the death row phenomenon as a violation of international law, these delays continue to increase.

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<sup>8</sup> *People v. Anderson*, 6 Cal.3d 628, 649 (1972); see also *Soering*, *supra* note 3, para.106; *Francis v. Jamaica*, Communication No. 606/1994, UN Doc. CCPR/C/54/D/606/1994 (1995).

<sup>9</sup> *Rahendra Prasad*, *supra* note 4.

<sup>10</sup> Bureau of Justice Statistics, *Capital Punishment, 1997, Time Under Sentence of Death Sentence and Execution, by Race, 1977-1997*, 20, Table 12.

<sup>11</sup> *Pratt and Morgan v. Jamaica* (Nos 210/1986 and 225/1987), UN Doc. A/44/40 222 (1989), para. 2.3.

<sup>12</sup> *Soering* *supra* note 3.

<sup>13</sup> *Çinar v. Turkey*, App. No. 17864/91, (1994) 79A DR 5 (reported in French version only).

<sup>14</sup> *Pratt and Morgan v. Jamaica* (Nos 210/1986 and 225/1987), UN Doc. A/44/40 222 (1989).

<sup>15</sup> *Guerra v. Baptiste* [1996] AC 397; 3 WLR 891 (1995).

<sup>16</sup> *Pratt and Morgan v. Jamaica* (Nos 210/1986 and 225/1987), UN Doc. A/44/40 222 (1989).

<sup>17</sup> *Guerra v. Baptiste*, *supra* note 15 at 891; *Catholic Comm'n v. Attorney Gen.*, 2 Z.L.R. 306, 307 (1993).

### **HRA Recommends**

9. The Commission establish a clear set of international guidelines for determining the death row phenomenon as a means of both supporting the advancement of international human rights law in general and aiding in the continuing efforts to combat the death penalty, including to further the goals of the resolutions concerning the death penalty, torture, and extrajudicial, summary, or arbitrary executions. Human Rights Advocates urges the Commission further to recognize the death row phenomenon as one of the limits on the death penalty.

10. The Commission reiterate its earlier expressed concern regarding the lack of protection given to those facing the death penalty in many countries, and its request that retentionist states observe human rights toward those prisoners.<sup>18</sup> Human Rights Advocates further urges the Commission to request the Special Rapporteur to consider the death row phenomenon in her review of the death penalty.

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<sup>18</sup> The Question of the Death Penalty, U.N.C.H.R., res. 2003/67, para. 4(f).